In the High Court of Uttaranchal, at Nainital.

A.O. No. 664/2001

(F.A.F.O. No. 780/1988)

1- Rewadhar Tewari S/o Shiv Datt Tewari
R/o Mohalla Tilakpur, District Almora
(since deceased).

2- Harish Chandra Tewari S/o Ram Datt Tewari
R/o Village Ujyola, Patti Uchur,
P.C. Bhatkola, District Almora.

3- Narendra Mohan Tewari S/o Rewadhar
Tewari, R/o Mohalla Tilakpur,
P.O. Almora, District Almora ....Appellants.

Versus

1- Chandra Kant Joshi S/o Ram Datt Joshi,
R/o Mohalla Chinakhan, District Almora.

2- United India Insurance Company Ltd.
Haldwani, District Nainital ... Respondents.

Sri K.N. Joshi, learned counsel for the appellants.
Sri K.K. Shah, and Sri Amish Tewari, learned counsel for the respondent/Insurance Co.

Hon'ble B.C. Kandpal, J:

This Appeal from Order, U/S 110(d) of the Motor Vehicles Act has been preferred against the judgment and award dated 8-7-1988, passed by the Motor Accident Claim/District Jude Almora, in MACP No. 2 of 987, Chandra Kanti Joshi Vs. Rewadhar Tewari and others, whereby the claim petition was allowed for compensation of Rs.16,362/- along with interest @ Rs. 12% per annum from the date of petition to the date of payment, payable by the owner, driver and the son of the owner jointly and severally.

2- Brief facts of the case giving rise to this appeal, are that Chandra Kant Joshi, claimant/respondent is the Head Clerk in Ramsay Inter College, Almora. On 26-7-1986, he was traveling by bus No. UHB-5027 from Almora to Daniya as a bona fide passenger after taking ticket. O.P. No. 1 Rewadhar Tiwari is the owner of this bus and O.P. No.2, Harish Chandra Tewari is its

driver. O.P. No.3, Narendra Mohan Tewari @ Lalit Mohan Tewari is the son of O.P. No. 1. The O.P. No.4 United India Insurance Company Ltd. is the insurer of the vehicle. When the vehicle reached about 1 Km. beyond Dhauladevi towards Daniya on Pithoragarh-Almora road at about 5-30 P.M., the bus was being driven by the O.P.No.3 Narendra Mohan Tewari, who had taken over from the regular driver Harish Chandra Tewari. He was driving the bus rashly and negligently. All of a sudden, the bus fell into a ditch about 112 feet below the road. On account of the accident, the claimant received a number of injuries on various parts of his body. His left ankle and rib were also fractured in the accident. He was treated at Government Hospital Daniya, and Almora and thereafter, he was also shifted to Nainital for treatment. The treatment is still continuing and he is yet not fit to carry out his normal daily pursuits in life. According to the claimant he spent Rs. 2000/- towards medicines and special diet, and a sum of Rs. 1000/- towards travelling expenses. He has further claimed a sum of Rs. 5000/- on account of pain and mental agony. A further amount of Rs. 10,000/- was claimed for physical handicap and pain, which still subsists.

3- The O.P. Rewadhar Tewari, the owner of the bus filed his W.S. and admitted that the claimant was travelling in his bus at the time of accident as a bonafide passenger. However, it has been alleged that there was no negligence or rashness on the part of the driver. He also denied that his son Narendra Mohan was driving the bus at the time of the accident.
4- The O.P./ driver filed his W.S. and alleged that he was driving the bus and Narendra Mohan was not driving it at the time of accident. He denied his

rashness and negligence in plying the vehicle. He also alleged that at the place of the accident there was curve and when he made an attempt to negotiate this curve, the steering of the bus got locked and its rakes did not work properly as there was a leakage in the brake oil.

5- The O.P. Narendra Mohan, filed his separate W.S. and admitted that he was travelling by the bus but has denied that he was driving it at the time of the accident.

6- The O.P./Insurance Company filed its W.S. and has alleged that the claim petition is bad for non-joinder of K.M.O.U.Ltd. as the vehicle was in its management. It also pleaded that the vehicle was being driven against the condition of insurance policy, as the person who was driving the bus, had no valid driving licence and the Insurance Company is not liable to any compensation.

7- On the pleading of parties the M.A.C.T. framed following issues:

1- Whether the claim petition is bad for on-joinder of necessary parties? If so, its effect?.
2- Whether Sri harish chandra Joshi, driver of the vehicle, drove the vehicle rashly and negligently? If so, its effect?.
3- Whether the breach of conditions of Insurance Policy has been done by the owner of the vehicle as alleged by the O.P. No. 4?.
4- Whether the claim petition is barred by limitation?. If so, its effect?.

5- Whether the claimant has suffered any damages due to injury?. To what amount of payment, he is entitled?.

6- Whether the alleged accident occurred due to the rash and negligent driving of the driver of this vehicle?.

7- What amount of compensation, the claimant is entitled?.

8- In support of his claim the claimant has examined P.W. 1 Diwan Singh, P.W.2, Mohan Ram, P.W. 3, Prakash Chandra, P.W.4, Chandrakant Joshi, P.W.5 Shankar Ram, and P.W.6, Dr. Girish Chandra Pande. The O.Ps. examined D.W.1, Harish Chandra Tewari, the driver of the bus, and D.W.2, Narendra Mohan Tewari. Parties also filed documentary evidecne.

9- The learned Tribunal, on hearing learned counsel for the parties and perusing the evidence made available on record, awarded compensation of Rs. 16,362/- to the claimant along with interest @ Rs. 12% per annum from the date of petition to the date of payment, payable by the owner, driver and the son of the owner jointly and severally.

10- Feeling aggrieved the O.Ps./owner and driver of the offending bus filed this appeal before the Allahabad High Court, which was transferred to this court after creation of new State.

11- Heard learned counsel for the parties and perused the record.

12- Learned counsel for the appellants has submitted that the offending bus at the time of the accident was insured with United India Insurance Company and was having valid insurance. It is also argued that the

offending bus was being driven by its own driver at the time of accident, hence, the Tribunal has committed manifest error in fixing the liability of compensation on the shoulders of owner and the driver of the vehicle. On the other hand the learned counsel for the Insurance Company has submitted that the vehicle at the time of the accident was not being driven by its own driver, but it was being driven by the son of the owner, O.P. Narendra Mohan Tewari, who had no driving licence, and breach of condition of insurance policy was committed, therefore, the learned Tribunal was justified in fixing the liability on the shoulders of the owner and the driver of the bus.

13- The main question involved in this appeal is 'whether the Tribunal was justified in fixing the liability of the compensation on the shoulders of the appellants/driver and owner of the offending bus or not?.'

14- It is the admitted case of the appellants/O.Ps. that Harish Chandra was the regular driver of the bus and O.P./appellant Narendra Mohan Tewari, son of the owner of the bus was also in the bus at the time of accident. It was also admitted that the claimant was travelling in the bus as a bonafide passenger. P.W.4, Chandra Kant Joshi, and P.W.5, Shankar Ram, examined on behalf of the applicant, have categorically stated before the M.A.C.T. that at the time for the accident, the bus was being driven by Narendra Mohan Tewari, although they had objected to it. Both these witnesses were also travelling in the offending bus at the time of accident. Both these witnesses had no reason to depose falsely against the appellants/O.Ps. Admittedly, Narendra Mohan did not

hold any driving licence and he should not have been handed over the bus by its driver. Therefore, the offending bus was being driven against the condition of the insurance policy. The Tribunal was justified in holding that the bus at the time of accident was being driven by Narendra Mohan Tewari, who had no valid driving licence. I find no infirmity in the impugned judgment and award of the Tribunal, fixing the liability of compensation on the shoulders of the appellants/ O.P.s.

15- Learned counsel for the appellants also submitted that the learned Tribunal has awarded interest @ Rs. 12% per annum, which is highly excessive and the rate of the interest be reduced. Looking to the facts and circumstances of the case, the interest awarded by the Tribunal in the present case is excessive and I am of the view that the interest should be awarded @ Rs. 6% per annum instead of Rs. 12% per annum from the date of filing the petition till the date of actual payment.

16- With the aforesaid modification in the rate of interest, the appeal is liable to be partly allowed.

17- The impugned judgment and awarded, awarding compensation of Rs. 16,362/- payable by the appellants/O.Ps., is hereby affirmed. However, the rate of interest awarded by the Tribunal is reduced from Rs.12% to Rs. 6% per annum. The appeal is accordingly partly allowed. The appellants shall deposit the amount of compensation with the Tribunal concerned within a period of two months.

18- If the appellants had deposited the statutory amount at the time of filing the appeal before the High Court, the same shall also be remitted to the Tribunal concerned. Any amount towards compensation, if already deposited, the same shall be adjusted towards the final payment of the compensation to be deposited by the appellants with the claim Tribunal.

(B.C. Kandpal, J.)

Dated: 28-09-2006
ISB